IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 143 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

BHARAT VIJAY CONSTRUCTION CO.

Appearance:

MR AKIL QURESHI FOR MR MANISH R BHATT for Applicant.

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 04/10/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following question has been referred in respect of assessment year 1979-80 :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the assessee is entitled to Investment Allowance of Rs.24,182/under section 32A of the I.T.Act ?"

2 We have heard Mr.Akil Qureshi, learned Counsel for the revenue. Though served, none appears for the respondent-assessee.

3 Our attention is drawn to the decision in the case of N.C.Buddharaj 204 ITR 412, laying down that the assessee engaged in the business of construction of Dams cannot be said to be carrying on an industrial activity so as to be eligible for investment allowance in relation to Section 32A of the Act. In view of the finding given by the Tribunal that the assessee is engaged in the construction work mainly relating to Dams and following the aforesaid decision of the Apex Court, we answer the question in the negative i.e. in favour of the revenue and against the assessee.

4 The reference is accordingly disposed of with no order as to costs.

Sd/- Sd/-

(M.S.Shah,J) (D.A.Mehta,J)

m.m.bhatt